

REMARKS

Reconsideration of this application and entry of this Amendment is respectfully requested.

In the office Action the Examiner withdrew claims 15-23 and 25-28 as being non-elected claims. Accordingly, Applicants have amended claims 15, 16 and 20-23 to depend directly or indirectly from independent claim 24. Claims 25-28 have been canceled, and claims 29-32 have been newly added with dependence directly or indirectly from claim 24. Claim 24 is the sole independent claim pending in the application.

Claim 24 has been amended to more specifically recite the compositions that produce the unexpected results of significantly improved conditioning performance as disclosed in Example 4, paragraphs [047] *et. seq.* of Applicants' Published Application No. US2004/0265258. Support for the amendments to claim 24 can be found in paragraph [049] of Applicants' published application.

The dependency of claims 15, 20 and 22 has been changed to depend from claim 24. New claims 29-32 have been added to recite preferred hair care compositions used in the method of claim 24. No new matter has been added.

The rejections of claim 14 under 35 USC § 112 have been obviated by its cancellation. However, Applicants wish to point out that the term "*Polysiloxane-11*" recited therein was an inadvertent typographical error. The correct expression should have been --*Polysilicone-11*--, which is industry accepted INCI (International Nomenclature of Cosmetic Ingredients) terminology for a crosslinked siloxane rubber formed by the reaction of vinyl-terminated siloxane and methylhydroxydimethyl siloxane in the presence of silicone. Thus, the term *Polysilicone-11* is not a trademark. Additionally, Applicants wish to

point out that triglycerol laurate is synonymous to the INCI designation polyglycerol-3 laurate. Claim 24 has been amended to recite the INCI nomenclature.

The rejection of the claims under 35 USC § 103(a) as being unpatentable over Bergmann et al (US. 6,432,393) in view of Jakobson et al (U.S. 5,466,719) or Jakobson et al (U.S. 5,247,114) will be traversed in the context of the current pending claims, that is, claims 15, 16, 19-24, and 29-32.

Before discussing the rejection, it should be noted that the hair care compositions used in the method of claim 24 produced unexpected results in the comparison tests in Example 4 as detailed in paragraphs [048] *et. seq.* of Applicants' published application.

Therein, a base composition was prepared that did not contain a silicone elastomer or an ethoxylated ester. For the comparison tests, Composition A was prepared from the base composition, differing from the base composition only by the addition of two grams of water. Composition B differs from Composition A in containing dimethicone/vinyl dimethicone crosspolymer as the elastomer component, but does not contain an ethoxylated ester. Composition C differs from Composition A in containing an ethoxylated ester component, but does not contain an elastomer component. Composition D, the inventive composition, contains both the dimethicone/vinyl dimethicone crosspolymer elastomer and the ethoxylated ester components recited in claim 24.

As noted in paragraph [049] of Applicants' published application, the silicone elastomer used in each composition was dimethicone/vinyl dimethicone crosspolymer available as Dow Corning 9509 Silicone Elastomer Suspension from Dow Chemical. Accordingly, to more precisely define the invention, the elastomer

recited in method claim 24 has been limited to a dimethicone/vinyl dimethicone crosspolymer.

The specific esters recited in method claim 24 are also taken from the Examples, and include polyglycerol-3 laurate, PEG-7 glycerol cocoate, PEG/PPG-8/3 laurate and sucrose laurate.

Each of the compositions recited in method claim 24 were tested in Examples 4, 5 and 6 and performed significantly better than Compositions A, B and C. See Tables 1-10 in paragraphs [056]-[062] in Applicants' published application. Notably, the Examiner has also acknowledged the unexpected results of Applicants' claimed invention in the last paragraph on page 10 of the December 5, 2008 Office Action.

Turning now to the rejection, Bergmann relates to aqueous and non-aqueous hair care compositions (column 2, lines 8-10). Bergmann's compositions include one or more elastomeric resinous materials that can be silicone and non-silicone elastomers (column 2, lines 39-44). The Examiner admits in the Office Action at the top of page 5 that Bergmann does not teach the use of esters.

Thus, Bergmann is deficient because there is no disclosure or suggestion to use a dimethicone/vinyl dimethicone crosspolymer in combination with the specific esters recited in claim 24 that produce the unexpected results in Applicants' claimed invention.

The deficiencies of Bergmann et al are not resolved by the Examiner's reliance upon Jakobson et al ('719), which discloses polyglycerol fatty acid ester mixtures as skin care compositions. See column 3, lines 21-33. Jakobson ('719) relates to a specific combination of esters (column 2, lines 50-54) that are not claimed by Applicants. In addition, Jakobson ('719) relates primarily to bath additive preparations (column 5, lines 26 to 55), and not to a method of treating

hair by applying to the scalp a rinse-out hair care composition as claimed by Applicants. Furthermore, there is no disclosure or suggestion in Jakobson ('719) to use a dimethicone/vinyl dimethicone crosspolymer in a method of treating hair.

It is respectfully submitted that the combination of Jakobson ('719) with Bergmann is deficient and does not collectively suggest the claimed invention in an obvious manner. This is because no incentive exists in Bergmann et al to use esters in a hair care preparation, and Jakobson et al ('719) relates primarily to bath additive preparations, not hair care compositions. Thus, there is no obvious incentive to combine the disparate teachings of Jakobson et al ('719) that relate to bath additives with Bergmann, which relates to hair care preparations.

Furthermore, even if there was basis to combine Jakobson et al ('719) with Bergmann et al, no obvious incentive is provided in the combination to collectively suggest the specific combination of dimethicone/vinyl dimethicone crosspolymer with the specific esters recited in Applicants' claimed invention to produce the unexpected results shown in the Examples. Such unexpected results have been acknowledged by the Examiner in the last paragraph of page 10 of the Office Action.

The Examiner's further reliance upon Jakobson et al ('114) in combination with Bergmann et al also does not resolve the deficiencies of the rejection. The deficiencies of Bergmann have already been discussed and are equally applicable herein. Jakobson ('114) discloses fatty acid polyglycerol ester mixtures that are primarily useful for skin care applications as cleansing agents, not in a method for treating hair by applying to the scalp a rinse-out hair care composition as claimed by Applicants. See Jakobson ('114) at column 1, line 64 to column 2, line 2; column 4, lines 32-53.

Jakobson ('114) also does not disclose the dimethicone/vinyl dimethicone crosspolymer disclosed in Applicants' claimed method and does not disclose or suggest the combination of dimethicone/vinyl dimethicone crosspolymer with the specific esters in Applicants' claimed invention. As already noted, the specific combination of components produce unexpected results acknowledged by the Examiner on page 10 of the Office Action.

Accordingly, it is respectfully submitted that the combination of Jakobson ('114) with Bergmann does not collectively suggest the claimed invention in an obvious manner. As already noted, there is no disclosure of esters and thus no incentive in Bergmann to use esters in a hair care composition. There is no incentive to combine the teachings of Jakobson ('114) with Bergmann because Jakobson ('114) relates to ester mixtures that are primarily useful as skin cleansing agents, and not hair care compositions.

Moreover, even if there was basis to combine Jakobson ('114) with Bergmann, the combination provides no obvious incentive or basis to collectively suggest the combination of a dimethicone/vinyl dimethicone crosspolymer with the specific esters recited in Applicants' claimed invention. This combination of components has been shown in the Examples of Applicants' specification to produce unexpected results that have been acknowledged by the Examiner.

Therefore, reconsideration and withdrawal of this ground of rejection is respectfully requested.

The Examiner has indicated on page 12 of the Office Action that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. However, in

concluding that one of ordinary skill in the art would have been motivated to combine the references to disclose the claimed invention in an obvious manner, the Examiner did not indicate where the teaching, suggestion or motivation to do so exists in the cited references. It is respectfully requested that if the Examiner continues this rejection, that specific details be provided by the Examiner to demonstrate the teaching, suggestion or motivation found in the combination of the references.

The rejection of the claims under 35 USC § 103 as unpatentable over EP 0855178 in view of Jakobson et al (U.S. 5,466,719) will be traversed in the context of the currently pending claims, that is, claims 15, 16, 19-24 and 29-32.

EP '178 relates to hair care products which comprise α -hydroxy-carboxylic acids and water-insoluble silicone elastomer powders that are washed away after using (page 2, lines 33-34). However, there appears to be no disclosure in EP '178 of the dimethicone/vinyl dimethicone crosspolymer claimed by Applicants in combination with the specific water dispersible or water soluble ester that produced the unexpected results acknowledged by the Examiner on page 10 of the Office Action.

The Examiner also admits that EP '178 does not disclose the specific esters claimed by Applicants. Thus, EP '178 is deficient because there is no disclosure or suggestion to use a dimethicone/vinyl dimethicone crosspolymer in combination with the specific esters claimed by Applicants that produce the unexpected results in Applicants' claimed invention.

The deficiencies of EP '178 are not resolved by its combination with Jakobson et al ('719). The deficiencies of Jakobson et al ('719) have already been discussed and are equally applicable herein.

In summary, Jakobson ('719) relates primarily to bath additive preparations and not hair care compositions. EP '178 relates to hair care products. The combination of references does not collectively suggest the claimed invention in an obvious manner because EP '178 does not disclose the claimed dimethicone/vinyl dimethicone crosspolymer and provides no incentive to use the esters in Applicants' claimed method, and Jakobson ('119) relates primarily to bath additive preparations and not hair care compositions. Thus, there is no obvious incentive to combine the teachings of Jakobson et al ('719) with EP '178.

Furthermore, even if there was basis to combine Jakobson et al ('719) with EP '178, no obvious basis is provided in the combination to collectively suggest the specific combination of dimethicone/vinyl dimethicone crosspolymer with the specific esters recited in Applicants' claimed invention to produce the unexpected results shown in the Examples, and acknowledged by the Examiner.

The Examiner has indicated at the bottom of page 16 of the Office Action that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggest or motivation to be found either in the references themselves or in the knowledge generally available to one skilled in the art. However, in concluding that Applicants' claimed invention as a whole is taught by the cited prior art, the Examiner has provided no explanation to establish how the combination of references make the claimed invention obvious to one skilled in the art. Therefore, it is respectfully requested that if the Examiner continues this rejection, that a specific explanation be provided for the Examiner's reasoning.

Accordingly, in view of the above arguments and amendments to the claims, it is respectfully submitted that this application is now in condition for allowance and such favorable action is respectfully requested.

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Respectfully submitted,

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By: /Charles J. Zeller/

Charles J. Zeller

Registration No. 28,682

Correspondence Address:

Avon Products, Inc.

Avon Place

Suffern, NY 10901-5605

Phone: (845) 369-2113

Fax: (845) 369-2900